IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 05 of 2005

Shri Jasin Anton Karwalo .. Petitioner

versus

Smt.Prabhavati Prabhakar Barve

and others .. Respondents

...

Mr.S.M. Kamble for the petitioner.

Mr.Atul G. Damle for the respondent no.3.

CORAM : D.G. KARNIK, J

DATED : 30th November 2006

P.C.:

1. Heard counsel for the petitioner and respondent no.3.

2. This contempt petition has been filed by the

petitioner alleging that the respondents had committed breach of the order of status quo passed by this court on 13th December 2004.

3. By filing an affidavit in reply respondent no.3 has denied that he has committed any breach of the order.. In paragraph no.4 respondent no.3 has specifically stated that though the order was passed on 13th December 2004,, he was not aware of the same as it was ex-parte order and it was served on the respondent on 7th January 2005. He has further averred that immediately on receipt of the order he has stopped further construction. There is nothing on record to show that the respondents carried out any construction after 7th January 2005. No rejoinder has been filed by the petitioner alleging that respondent no.1 carried out any construction after 7th January 2005.

4. Learned counsel for the petitioner further invited my attention to the latter part of paragraph no.4 of the affidavit of respondent no.3 wherein he has stated that after receipt of order of injunction of status quo he carried out only pouring which was necessary for protecting the property. Counsel for the petitioner therefore submitted that this amounted to the breach of

the order of status quo and hence contempt. Counsel for the respondent explained that pouring is a technical phrase used for the purpose of sparkling water for the r.c.construction for the purpose of hardening of the cement. Pouring of the water is thus means for preservation of the work which is already done and it cannot be said to be making any new construction or not maintaining the status quo. In fact, it is meant for maintaining the status quo for protecting the structure which is in existence on the date when the order is communicated.

5. For these reasons, there is no merit in the contempt petition which is hereby dismissed summarily.

(D.G. KARNIK, J)